Bank fees and charges: economic analysis, legal framework and relevance for financial stability

Alejandro Ferrer and Álvaro Pereda

BANCO DE ESPAÑA

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BANK FEES AND CHARGES: ECONOMIC ANALYSIS, LEGAL FRAMEWORK AND RELEVANCE FOR FINANCIAL STABILITY

Abstract

This article analyses recent developments in Spanish banks' fee and commission income and the related applicable legal framework. The main conclusions point to the increasing relevance of payment services, the overall rise in such income in Spain, in clear alignment with other European jurisdictions (though it still lags behind), and the role it can play in sustaining bank profits and solvency during economic downturns. There is also a trend towards the introduction of new charges. From a regulatory perspective, there are recent legislative initiatives that aim to guarantee ATM cash withdrawal services, to consider certain banking services universal, to bridge the digital gap and to ensure compliance with the statutory requirements concerning payment accounts with basic features. Nonetheless, the current legal framework does not grant the Banco de España any powers to authorise or overrule fees or charges or to limit their amount. While growing this income stream may have a positive impact on banking sector stability, it may also entail certain risks, such as the migration of customers to new digital operators, the impact on financial inclusion or the harm to credit institutions' reputations.

Keywords: bank fees and charges, banking business, financial stability, regulation.

1 Introduction

In recent years, fee and commission (F&C) income has become an increasingly important source of revenue for Spanish banks, particularly in connection with payment services. This development forms part of a process of convergence at European level, in which the gap between Spain and the European average has narrowed as such fees and charges have gradually increased.[1]

While this process of convergence has helped mitigate the downturn in banks' profitability, it has also sparked a growing public debate on the amount and design of such fees and charges and their cost for customers. Moreover, all of this is taking place in the midst of a change of model, brought about by the increasing digitalisation of services and influenced by the emergence of new financial operators.[2]

1 For instance, between 2015 and 2021, the gap between the fee and commission income-to-total assets ratio for business in Spain and the average ratio for Germany, France, Italy and the Netherlands combined narrowed by around 27%.

2 As borne out, for instance, by the 10.6% year-on-year increase in charges by banks and post offices recorded in the December 2021 consumer price index (see *2021 consumer price index, charges by banks and post offices*, Spanish National Statistics Institute (INE)).

The evidence at European level suggests that, much like net interest income, bank fees and charges are sensitive to the economic cycle. Nonetheless, while there is a degree of heterogeneity across different banking services and financial institutions, fee and commission income is generally more resilient to adverse scenarios than net interest income. Thus, in certain adverse scenarios, banks' solvency may be safeguarded where such fees or charges account for a larger share of their income.[3]

This behaviour suggests that, from a financial stability standpoint, a greater weight of F&C income in banks' revenues could, in principle, be seen as a plus, particularly where the additional profits are used to build up capital. However, these developments may also entail unwanted consequences, such as greater financial exclusion, difficulties in the use of certain means of payment or the migration of customers to other providers and services. While the likelihood and severity of such consequences are uncertain, they could ultimately exact a reputational toll on banks vis-à-vis their customers, to the detriment of long-term profitability.

With a view to contributing to the research on this subject, this article takes stock of the current situation and the future outlook for F&C income in Spain from an economic standpoint. It also analyses the current regulatory framework (which does not grant the Banco de España any powers to authorise or overrule charges or to limit their amount) and the latest developments in this regard. The rest of this article is approached from these two angles. First, the economic aspects are addressed, followed by an analysis of the regulatory features, before finishing with a brief description of how bank fees and charges have evolved. An annex with supplementary information from the econometric analysis is included at the end.

2 Economic aspects

2.1 Recent developments and current situation

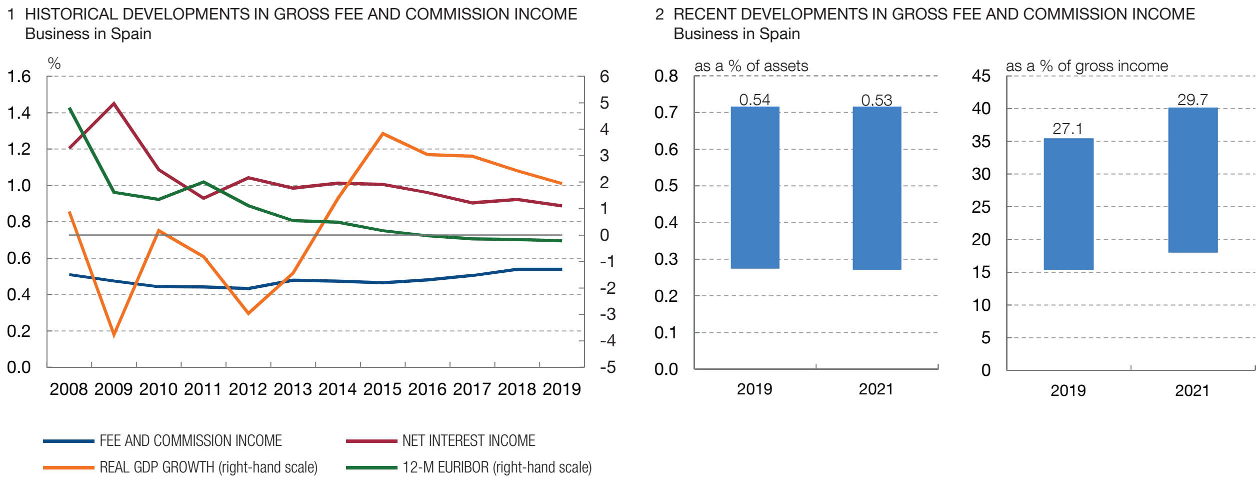
Fees and charges have traditionally been a stable source of revenue for Spanish banks, albeit secondary to net interest income which is the core component of their regular income. With the downward trajectory of interest rates, in negative territory since mid-2014, and the ensuing squeeze on net interest margin, alongside the gradual process of streamlining and restructuring banks' balance sheets, earning income through bank fees and charges has emerged as one way of shoring up profits.

Chart 1.1 shows the developments in Spain in the gross F&C income-to-total assets ratio for the country's significant[4] and less significant deposit-taking institutions since the end of the downturn following the global financial crisis that began in 2008,

3 See European Central Bank (2016 and 2017).

4 Significant institutions are those directly supervised by the European Central Bank (Single Supervisory Mechanism).

Chart 1
COMPARISON OF DEVELOPMENTS IN TOTAL GROSS FEE AND COMMISSION INCOME (a)



SOURCE: Banco de España.

a Fee and commission income and net interest income are shown divided by total assets. The floating columns in Chart 1.2 represent the range of values between the 15th and 85th percentiles of the sample of Spanish deposit-taking institutions. The value shown above the columns is the aggregate average for all of them.

together with other key variables: net interest income-to-total assets, real GDP growth and the 12-month EURIBOR. At December 2019, before the health crisis hit, gross F&C income[5] stood at 0.54% of total assets, with an upward trend in recent years accompanied by falling interest rates and a recovery in activity. Similarly, net interest income accounted for 0.89% in 2019, trending slightly downwards in this case.

Chart 1.2 shows the change in the gross F&C income-to-total assets ratio between 2019 and 2021, which fell slightly from 0.54% to 0.53% due to the health crisis. It is nonetheless worth noting that, in gross income terms, the share of F&C income rose from 27.1% to 29.7% thanks to the greater resilience of this revenue stream to the economic downturn. This increase in the share of F&C income is a general phenomenon and can be seen across the distribution of banks, as borne out by the increase in the 15th and 85th percentiles.

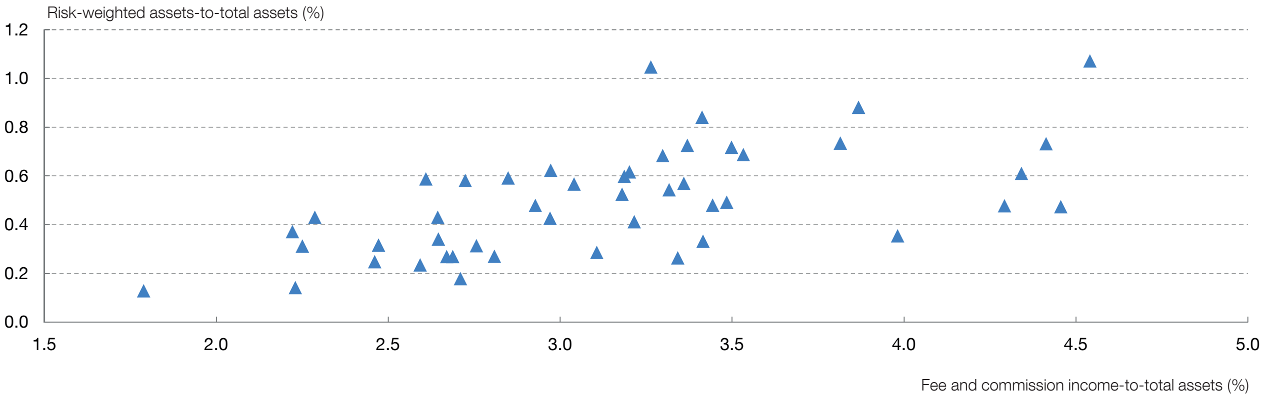
As a counterpoint to this growth in F&C income, it should be noted that certain operational risks are assumed when providing banking services. Chart 2 shows, for significant and less significant institutions alike, a positive correlation between higher F&C income and greater operational risk, the latter being measured by dividing banks' risk-weighted assets by their total assets.[6]

5 In other words, net of any fee and commission expenses incurred by banks.

6 This positive correlation is consistent with the fact that, as far as operational risk is concerned, risk-weighted assets are currently a function of gross income (which includes F&C income) under both the standardised and the basic indicator approach.

Chart 2

CORRELATION BETWEEN TOTAL GROSS FEE AND COMMISSION INCOME AND OPERATIONAL RISK (a)



SOURCE: Banco de España.

a Data at December 2021. The fee and commission income-to-total assets ratio represents business in Spain, whereas the data on risk-weighted assets are available on a consolidated basis, and therefore include business abroad. To avoid distorting the correlation, the banks most active internationally have been excluded from the chart.

F&C income can be broken down by type of underlying service; for instance, payment services, services relating to customer resources distributed but not managed (including, in particular, the marketing of third-party products, such as funds or insurance), securities management, custody services, financial advice and foreign exchange or commodity-related services, among others. At December 2021, the top two categories in terms of F&C income for Spanish banks were payment services, accounting for 31.2% of the total, followed very closely by customer resources distributed but not managed, representing 28.1% of the total.

Given its increasing public prominence in recent times, income from payment services is analysed in further detail below, before touching briefly on income from customer resources distributed but not managed at the end of the section.

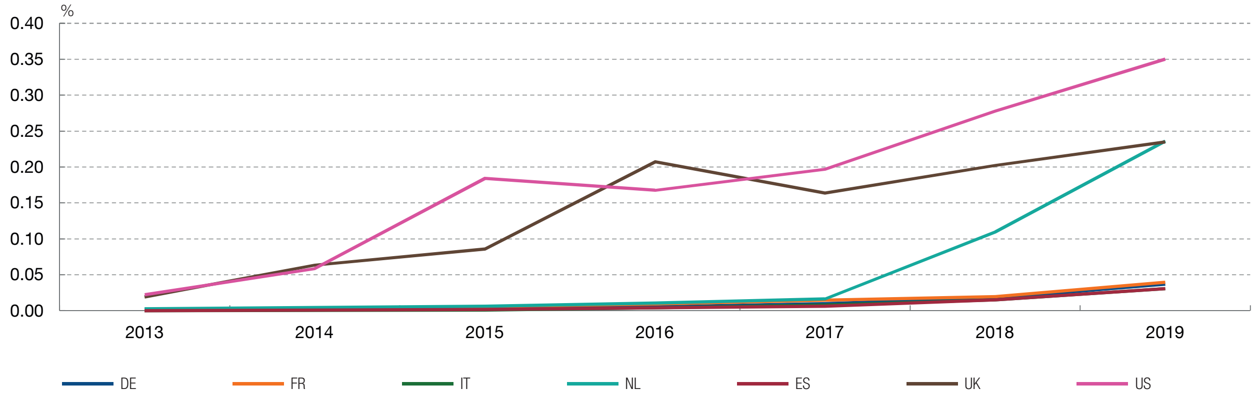
Payment services-related fee and commission income is of particular interest for several reasons. First, the payment services operating model is currently undergoing a significant change thanks to increasing digitalisation.[7] How customers respond to this new model poses the biggest challenge, particularly given the emergence of new digital operators (fintech and bigtech),[8] precipitated by the liberalisation envisaged in the second EU Payment Services Directive (PSD2).[9] While the role of

7 Indeed, new technological capacities may give rise to the design of new business models. See Martínez Resano (2021).

8 In layman's terms, fintech refers to institutions that use new digital technologies to offer innovative financial services, whereas bigtech refers to large technological corporations with a strong presence in the regular, widespread use of digital devices and services.

9 Transposed into Spanish law in 2018, the Directive obliges banks to allow other payment service providers to access their customers' payment accounts.

Chart 3
DEVELOPMENTS IN BIGTECH AND FINTECH CREDIT (a)



SOURCE: Cornelli et al.(2020).

a The chart shows, at consolidated level, the lending by fintech and bigtech operators as a percentage of the traditional financial sector's total lending to non-financial corporations. Data available up to 2019. DE: Germany; FR: France; IT: Italy; NL: The Netherlands; ES: Spain; UK: United Kingdom; US: United States.

these new competitors in lending activity in Spain's neighbouring economies remains anecdotal (see Chart 3), they are seeing sustained growth, and their business model is characterised by the ability to offer payment services at a lower cost thanks to a more efficient technical infrastructure and potential monetisation of their customer user data.

Moreover, the emergence of new digital payment mechanisms, such as instant transfers (which are increasingly commonplace in Spain and could soon also be used in retail in place of credit card payments), is likely to bring about an overhaul of the payments model itself, which would naturally cross over to the model for collecting the associated fees and commissions. Particularly noteworthy is the possible issuance of a digital euro by the European Central Bank (ECB), which in July 2021 gave its approval for a study of the viability, design, risks and operating and legal requirements of such a currency, starting in October 2022 and set to last two years.[10] Depending on the final design, this payment instrument, which would also include transactions between individuals and retailers, could have a sizeable impact on fee and commission income.[11] The manner and extent to which traditional banks will be affected by such innovations remains unclear, but it seems reasonable

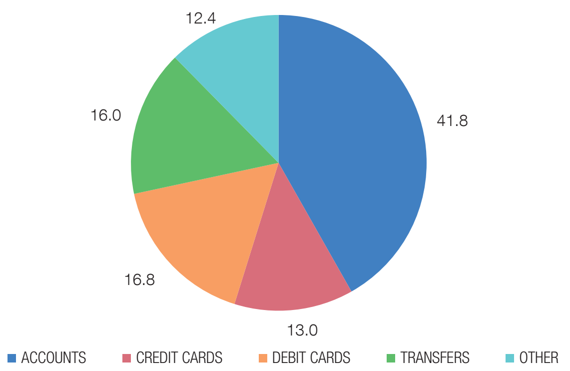
10 See European Central Bank (2020 and 2021).

11 The creation of a personal digital wallet in which to keep digital euro, unrelated to any particular bank, could have a considerable impact on the financial system, particularly in a very low interest rate setting. According to the latest Spanish Survey of Household Finances (2017), 93.8% of Spanish households hold an account or deposit from which payments can be made, with an average balance of €4,100 (€2,000 in the case of the under-35s). Such deposits could be converted, at least partially, into digital euro, which could have a major impact not only on bank fees and charges but also in areas such as monetary policy transmission or the prevention of money laundering. See Box 2.3 of the *Financial Stability Report,* Spring 2021.

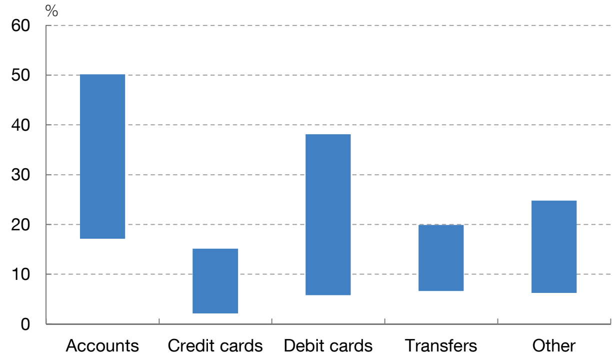
Chart 4

COMPOSITION OF GROSS FEE AND COMMISSION INCOME IN SPAIN FROM PAYMENT SERVICES (a)

1 BREAKDOWN OF FEE AND COMMISSION INCOME BY TYPE OF PAYMENT SERVICE
Business in Spain, %



2 DISPERSION IN THE WEIGHT OF FEE AND COMMISSION INCOME, BY PAYMENT SERVICE



SOURCE: Banco de España.

a Data at December 2021. The floating columns in Chart 4.2 represent the range of values between the 15th and 85th percentiles of the sample of Spanish deposit-taking institutions.

to expect that the business of earning income from the provision of payment services will have to adapt to a substantial operational change.[12]

Payment service charges are also notable for the significant volume of complaints and claims they generate from the average bank customer,[13] as well as their direct impact on aspects such as financial exclusion or preferred means of payment.

Chart 4 shows a breakdown of the gross fee and commission income associated with payment service charges for the significant institutions sampled, based on data at December 2021.

Overall, current account-related charges account for the largest share (41.8% of the total), followed by charges on debit cards (16.8%), transfers (16%) and, lastly, credit cards (13%). “Others” accounts for the remaining 12.4%. The dispersion in the different services across banks is notable, testifying to the wide range of commercial approaches. Particularly noteworthy is the heterogeneity in the share of both debit and credit cards, as a result of the various customer loyalty reward strategies on the market.

12 See Senabre, Soto and Munera (2021) for an analysis of some of the challenges associated with this operational transformation.

13 For instance, in recent years the Banco de España’s Institutions’ Conduct Department has seen a significant rise in the number of claims concerning fees and charges on financial services, mainly deriving from fees and charges on the provision of current account-related services. Thus, while 1,545 cases relating to such issues were processed in 2019, this number rose to 2,964 in 2020 (a 91% increase on the preceding year), while the provisional figure for 2021 H1 stands at 2,226 (which, extrapolated to an annual figure, represents, in turn, an increase of 50% on 2020).

Finally, it is worth recalling that payment services also generate an array of operating costs for banks,[14] due to the need to use the financial market infrastructures that manage and operate the systems used by banks to exchange, clear and settle transfers and direct debits. These systems set their own operating rules, including the costs to be borne by banks for using them and for settling transactions.[15] Moreover, to exchange transactions, banks have to use financial communication networks and technical service providers[16] that connect them to such networks and to their correspondent banks in the payment chain.

Lastly, the two main sources of income from customer resources distributed but not managed are the marketing of funds (55.9% of the total) and of insurance (40.2%). With a share of total revenue very similar to that of income from payment services, these are significant income streams for Spanish banks. In addition, at least initially, they are less likely to be affected by the emergence of new digital competitors, since it is precisely the traditional banks' commercial networks, together with the cross-selling of other banking products, that essentially generate the sizeable returns from these types of fees and charges. Nonetheless, over the longer term, if the new operators are able to secure a larger customer base, they will also be able to compete for these types of marketing services and the associated revenue.

2.2 Stylised empirical facts

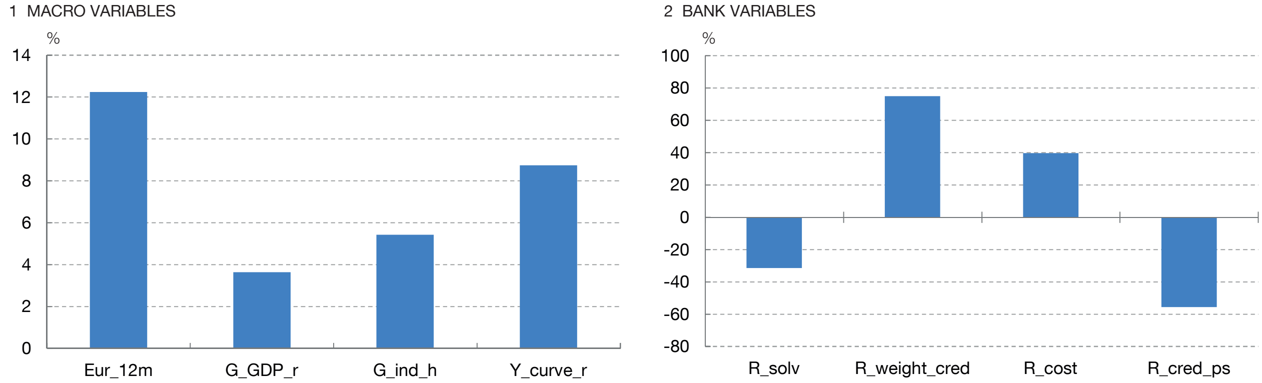
This section analyses the relationship between F&C income and both the economic cycle and bank characteristics from an empirical standpoint. To this end, a panel of significant institutions has been considered, for annual periods running from 2000 to 2019, with a view to capturing developments over a sufficiently long time window that includes expansionary and recessionary periods. The panel stops at 2019 to ensure that the effects of the COVID-19 pandemic (a contraction in economic activity over a single year without precedent in recent times, together with the simultaneous roll-out of an ambitious package of support measures) do not distort the findings.

14 The costs can vary from bank to bank depending on whether they opt to settle transactions directly or indirectly via a settlement agent, on the volume of transactions settled and on other considerations.

15 In Spain, most transfers and direct debits are processed using the National Electronic Clearing System (SNCE, by its Spanish initials), currently managed by Iberpay, with the exception of "on-us" transactions in which the payer and payee have the same bank and which are therefore settled directly on its books. The SNCE also has gateways connecting to other European infrastructures for cross-border SEPA transfers, such as STEP2, RT1 or the TARGET 2 TIPS service. Another alternative are urgent transfers (OMF, by their Spanish initials) or "Banco de España transfers", which are settled in TARGET 2. International and foreign currency transfers are processed via the correspondent banking networks established by each institution by entering into contracts for services, which may be reciprocal or otherwise.

16 Examples of such providers include SWIFT, Movistar and SIA. SWIFT is one of the network service providers on the leading European payment systems, such as TARGET2 (TIPS), STEP2 and the SNCE itself (together with Movistar). SWIFT is also the network used by banks to send foreign currency transactions to their correspondent banks.

Chart 5
ELASTICITIES OF THE FEE AND COMMISSION INCOME-TO-TOTAL ASSETS RATIO WITH RESPECT TO THE KEY VARIABLES IN THE EXPLORATORY ANALYSES OF STYLISED FACTS (a)



SOURCE: Banco de España calculations.

a Marginal elasticities obtained separately in each exercise. All the variables are statistically significant (p-value <0.1). In the case of the analysis of bank variables, these are lagged by one period in the model. The following variables are considered: Eur_12m, twelve-month EURIBOR; G_GDP_r, real GDP growth; G_ind_h, growth in the house price index; Y_curve_r, yield curve: spread between ten-year bonds and the twelve-month EURIBOR; R_solv, own funds-to-total assets; R_weight_cred, credit-to-total assets; R_cost, financial costs-to-financial liabilities; R_cred_ps, average rate of lending to the private sector.

The left-hand variable of the regressions is the total gross F&C income, expressed as a percentage of total assets to approximate the average unit fees and charges. The data come from supervisory financial reporting and refer to business in Spain. Two analyses are considered: one of the effect of the macro variables and the other of the effect of the bank variables. Chart 5 shows the elasticities[17] of the most relevant variables in the two exercises, whose main findings are addressed below. Further information can be found in the annex.[18]

With respect to the first exercise, the right-hand side of the regression includes variables that capture changes in economic activity, in order to study the cyclical sensitivity of gross F&C income, an area of interest from a financial stability standpoint. A bank fixed effects variable is also included to capture differences in banks' business models.[19]

The results reveal the markedly cyclical behaviour of F&C income in Spain. Positive and statistically significant coefficients are thus obtained for real GDP growth,

17 In other words, the relative increase in the dependent variable (F&C income-to-total assets) in the event of a given relative increase in a particular explanatory variable, holding all other variables stable, measured in terms of the relative increase in the latter. For instance, an elasticity of 25% means that the dependent variable will increase by one fourth of the increase in the explanatory variable, in line with the above considerations.

18 Alongside the results of the regressions that consider all of the independent variables (full models), which are analysed in this section, the annex also includes the results of additional regressions with a subset of independent variables (reduced models).

19 The estimation has been made using the ordinary least squares (OLS) method robust to heteroscedasticity and autocorrelation.

Madrid stock market growth and house price growth, while the unemployment rate has no significant impact.

As for the effect of interest rates, the coefficient is positive and significant in terms of both the short-term interest rate, represented by the 12-month EURIBOR, and the slope of the yield curve, represented by the spread between the 10-year rate and the 12-month EURIBOR. This suggests that, historically, at any given point in the economic cycle, this is the setting in which banks can accommodate higher prices for such services, thereby earning higher returns.

Lastly, there is a statistically significant and negative correlation with aggregate domestic credit growth. Once controlled for the position in the cycle and the level of interest rates, this probably reflects the more stable nature of F&C income[20] and the fact that credit is the core component of Spanish banks' assets, and any decline in the former therefore immediately triggers a decline in the latter (which is the denominator in the ratio analysed).

The second empirical analysis conducted on this panel seeks to study which bank characteristics are correlated with gross F&C income. To this end, a regression including some of the most relevant bank characteristics (solvency, liquidity, risk, profitability and business profile) is used, together with bank and time-fixed effects so as to isolate the cyclical conditioning factors.[21]

The results obtained reveal various aspects of interest. Solvency has a statistically significant negative effect, suggesting that weaker banks tend to focus on charging fees and commissions, possibly as a means to shore up profits and solvency. The effect is also significant (positive in this case) for the share of credit as a proportion of total assets, suggesting that institutions more geared towards traditional banking are better able to generate F&C income.[22] Conversely, the distribution of bank lending between retail and wholesale customers has no significant impact.

In terms of profitability, while return on assets (ROA) has no significant effect, probably because it includes other non-regular income, the same cannot be said of two profitability metrics more closely linked to traditional banking. Thus, banks earning higher returns from lending to the private sector tend to earn more F&C income. There is also a significant correlation (positive in this case) with the cost of liabilities, meaning that banks with higher costs also tend to earn higher returns from

20 For instance, the regular demand for payment services from a bank's customers is not severely affected by any moderate increase or decrease in their credit exposure to the institution.

21 As above, the estimation has been made using OLS robust to heteroscedasticity and autocorrelation.

22 This finding regarding credit tallies with the previous one (where the effect was negative) bearing in mind that, in this case, the comparison is between banks at a given point in time, meaning that those most active in lending also earn the highest returns from fees and commissions. Nonetheless, at aggregate level and over time, given the more stable nature of F&C income, a fall in lending, all else being equal, leads to a rise in the F&C income-to-assets ratio.

fees and commissions. The combination of the two sensitivities may reflect a commercial strategy that seeks to strike a balance between the net interest margin earned from credit intermediation and the F&C income earned from the provision of banking services.

Meanwhile, the number (relative to volume of credit) of employees reveals a positive and significant coefficient, consistent with the fact that this probably reflects a larger commercial network, making it easier to provide some banking services and thus earn the associated fees and commissions.

Lastly, the liquidity position does not have a significant effect, nor does growth in individual credit at each bank, once fixed effects are used to control for aggregate cyclical movements.

2.3 International comparison

A comparison of bank fees and charges in Spain and in other European countries is useful, in particular to identify any distinguishing characteristics. However, the international information available is at consolidated level for all of the banking groups and individual institutions of each country (and therefore includes F&C income from foreign subsidiaries).[23]

That said, Chart 6 compares net F&C income as a percentage of total assets (Chart 6.1) and of gross income (Chart 6.2) for a sample of the main euro area economies, as well as for the region overall, for December 2015 and December 2021, with a view to capturing the recent developments in these metrics up to and including the health crisis.

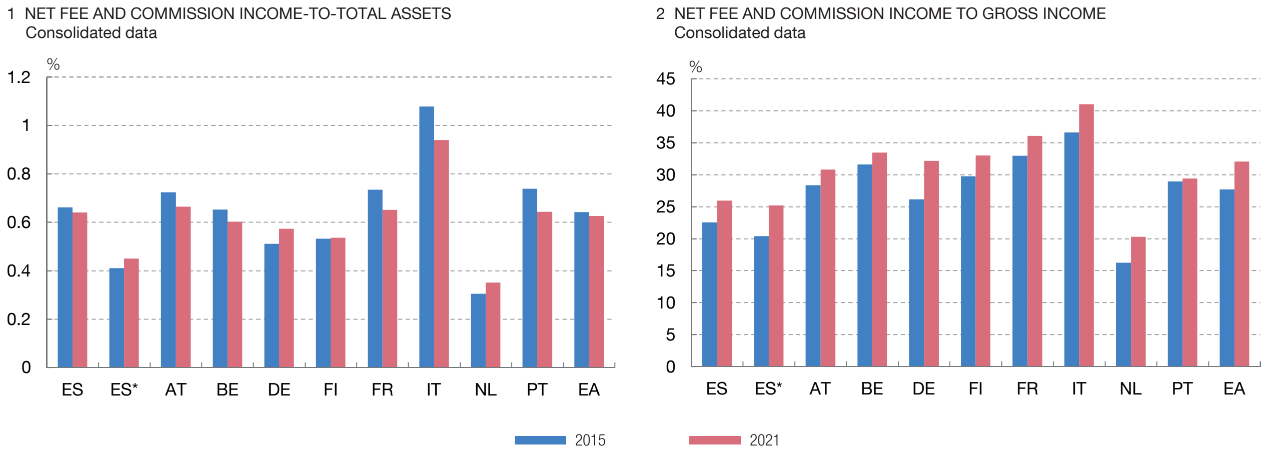
In terms of fee and commission-generating capacity, Chart 6.1 shows the changes in F&C income between 2015 and 2021. Prior to the pandemic, Spain (0.64%) was at the euro area average, albeit trailing neighbouring countries such as Italy (0.94%), France (0.65%) and Portugal (0.65%). In any event, it is important to note that these figures also include international business. If only business in Spain is considered, the Spanish ratio stands at 0.45%, which indicates that international business generates significantly more F&C income than business in Spain. Indeed, in this sample, only the Netherlands trails Spanish banks in domestic business.

In terms of share of gross income, a clear upwards trend can be seen in most countries, as well as in the euro area overall, which is consistent with the strength of this revenue stream in a low-interest rate environment. In Spain, this share rose from 22.5% to 26% between 2015 and 2021, though it still lags significantly behind most

23 The following national identifiers are used in the international comparison: AT: Austria; BE: Belgium; DE: Germany; ES: Spain; ES*: business in Spain; FI: Finland; FR: France; IT: Italy; NL: The Netherlands; PT: Portugal; EA: Euro Area.

Chart 6

TOTAL NET FEE AND COMMISSION INCOME FOR THE MAIN EURO AREA COUNTRIES (a)

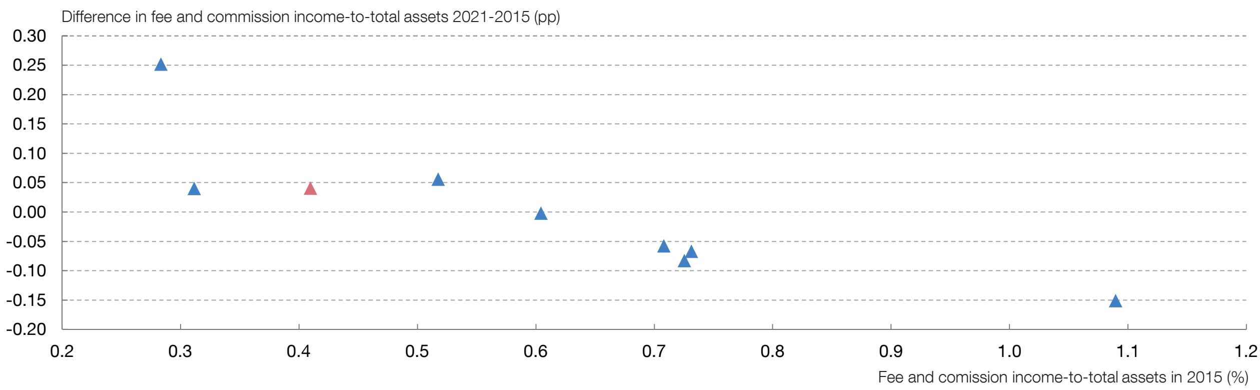


SOURCES: Statistical DataWarehouse, ECB.

a ES: Spain; ES*: business in Spain; AT: Austria; BE: Belgium; DE: Germany; FI: Finland; FR: France; IT: Italy; NL: The Netherlands; PT: Portugal; EA: Euro Area.

Chart 7

CONVERGENCE IN NET FEE AND COMMISSION INCOME-TO-TOTAL ASSETS IN THE EURO AREA (a)



SOURCE: Statistical DataWarehouse, ECB.

a The horizontal axis shows the level of net fee and commission income-to-total assets in 2015, while the vertical axis shows the difference in that metric between 2015 and 2021. All figures are at consolidated level, save for Spain, for which the aggregate of domestic business is shown. The red triangle denotes Spain.

euro area countries, where the overall share stood at 32% at end-2021. In terms of business in Spain, the Spanish ratio stood at 25.2% in 2021.

Despite the gap between countries shown in Chart 6 for 2021, the period since 2015 has also seen a degree of convergence, even despite the effects of the pandemic, as borne out by Chart 7, which compares net F&C income-to-total assets in 2015 (horizontal axis) with the difference in that metric between 2021 and 2015 (vertical axis) for the set of countries included in the previous chart (only domestic business has been considered for Spain).

3 Regulatory aspects

3.1 General legal framework

In addition to the analysis of the economic features set out in the preceding section, it is also important to examine the legal framework currently in force in Spain in relation to the fees and charges levied by credit institutions in connection with the provision of banking services, including, for these purposes, payment services.

This regulatory framework is based on credit institutions' freedom to establish fees and charges with their customers[24] (save in very specific cases where fees and charges on particular banking transactions or services are expressly limited),[25] provided they are for services requested or expressly accepted by the customer and effectively rendered by the credit institution. Moreover, credit institutions can also charge any expenses they incur when providing a service. The freedom to establish fees and charges is intrinsically linked to the freedom to conduct a business enshrined in Article 38 of the Spanish Constitution, and has taken its place alongside other legitimate rights and interests in competition law.[26]

In this respect, credit institutions are subject to certain transparency requirements,[27] with a particular focus on the pre-contractual and contractual information to be provided to customers when entering into or amending existing contracts, including, for such purposes, any specific fee and commission-related clauses.

24 See Article 5(1)(b) of Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions; Article 3 of Ministerial Order EHA/2899/2011 of 28 October 2011 on transparency and customer protection in banking services, and Banco de España Circular 5/2012 of 27 June 2012 to credit institutions and payment service providers on the transparency of banking services and responsible lending (Spanish versions only).

25 As with any right, the freedom to conduct a business is not absolute or unconditional, but rather it is subject to any statutory regulations the public authorities may enact with respect to different business activities (see, by way of example, Constitutional Court Judgment 18/2011 of 3 March 2011 (Spanish version only)) .

26 The Constitution's recognition of a market economy, as the necessary framework for the freedom to conduct a business, and the undertaking on the part of the public authorities to safeguard this right, call for action specifically tailored to upholding such constitutional aims. One such action consists of preventing any practices that might affect or seriously harm an element as crucial to the market economy as is competition between businesses. Thus, competition protection emerges as a necessary safeguard for (as opposed to a restriction on) the freedom to conduct a business and the market economy, which would otherwise be threatened were the natural tendencies of the latter given free rein (see Legal Ground 4 of *Constitutional Court Judgment 88/1986 of 1 July 1986* (Spanish version only)). Meanwhile, Spain's membership of the European Union and the EU's fundamental freedoms (i.e. free movement of persons, services, goods and capital) are essential to the development of free competition and underpin this principle. In particular, Title VII (articles 101 et seq) of the Treaty on the Functioning of the European Union sets out the bases for the numerous EU competition regulations.

27 For the purposes of the transparency regulations, the term "customers" is understood to refer to natural persons (see Article 2(1) of *Ministerial Order EHA/2899/2011 of 28 October 2011 on transparency and customer protection in banking services* (Spanish version only)).

In other words, in general terms, bank fees and charges are set freely under the general legal framework. The Banco de España does not authorise bank fees and charges, nor may it overrule them or limit their amount. Yet it supervises the institutions within its remit and sanctions any breaches of the transparency and customer protection regulations in the area of banking services, payment services included.

Furthermore, the Banco de España is tasked with handling any complaints from financial services users and with settling any claims deriving from possible infringements of the transparency and customer protection regulations or of good financial practices.[28]

From a legal perspective, the final decisions issued by the Banco de España's Institutions' Conduct Department, which settles any complaints lodged by banks' customers, are not binding, nor deemed administrative decisions subject to appeal. Nonetheless, in early 2022 the Ministry of Consumer Affairs announced that measures would be approved requiring that institutions abide by any Banco de España decisions and rulings that find in favour of credit institutions' customers.[29]

Examples of the general transparency requirements in fees and charges on banking[30] and payment services[31] are set out in Table 1.

Moreover, the rules on cross-border payments within the European Union require that any fees and charges levied by a payment service provider on a payment service user in respect of cross-border payments must be the same as the fees and charges

28 See *Ministerial Order ECC/2502/2012 of 16 November 2012 regulating the procedures for the filing of complaints with the complaints services of the Banco de España, the National Securities Market Commission (CNMV) and the Directorate General for Insurance and Pension Funds* (Spanish version only). In 2020, the Banco de España processed a total of 21,320 complaints. Current accounts and deposits accounted for 4,192 complaints, notable examples including those concerning fees charged to accounts (1,147 due to maintenance fees and 987 to other fees and charges).

29 According to the Governor of the Banco de España, the fact that the Banco de España's decisions are not binding on banks "constrains the effectiveness of the complaints system and […] should be given consideration in any future amendment" to the current regulations (see P. Hernandez de Cos (2021), *"Bank governance and conduct. Keys for the reputation and sustainability of banks' business models in Spain"). Specifically, this issue is addressed in the Draft Bill of the Law for the creation of an Independent Administrative Authority for the Protection of Financial Customers, open for public consultation until 12 May 2022, which seeks to centralise within one single body the current complaints services of the Banco de España, the CNMV and the Directorate General of Insurance and Pension Funds, whose decisions will be binding on financial institutions for complaints amounting to €20,000 or less.*

30 See *Ministerial Order EHA/2899/2011 of 28 October 2011 on transparency and customer protection in banking services* (Spanish version only).

31 See Articles 29 and 33 of *Royal Decree-Law 19/2018 of 23 November 2018 on payment services and other urgent financial measures*; Chapter IV of *Royal Decree-Law 19/2017 of 24 November 2017 on payment accounts with basic features, payment account switching and the comparability of fees*; Article 14 of *Ministerial Order ECE/1263/2019 of 26 December 2019 on transparency of the disclosure terms and conditions and requirements applicable to payment services*; and *Banco de España Circular 2/2019 of 29 March 2019 on the requirements of the Fee Information Document and the Statement of Fees, and of payment account comparison websites* (Spanish versions only).

Table 1
TRANSPARENCY REQUIREMENTS

	Banking services	Payment services
Information	On the fees and charges habitually applied/expenses passed through, in a standardised format per the Banco de España rules	On terms and conditions relating to the payment services provided, including the associated expenses
		This information forms part of the content of the framework contract. Handover of the “Fee Information Document” or (“FID”) with the fees and charges applicable to the most representative services associated with the payment account
Services via distance communication/ATMs/similar devices	Details of the applicable fees and charges and the expenses to be passed through immediately prior to providing the service	Not applicable
Pre-contractual information	Presentation of fees in a manner that is clear, appropriate, sufficient, objective and not misleading	The fees and charges included in the pre-contractual (and contractual) documentation must match the FID in terms of concept and amount
Contract amendments	The contract must provide for the credit institution’s rights and obligations as regards the modification of the fees and charges/relevant expenses, as well as the customer's rights where such amendments are made	
	Any amendment to the terms and conditions of a contract must be notified beforehand, at least one month in advance (provided the initial contract term is longer), unless it is more favourable to the customer in which case it may be applied immediately	Any amendment to the terms and conditions of a framework contract must be notified individually to customers beforehand, at least two months in advance of the date on which the proposed amendment enters into force
		Customers may accept or reject the amendments to the framework agreement before the date proposed for their entry into force, by the same means with which they were notified. Customers may terminate the contract where they disagree with the amendment
		Any amendments that unequivocally benefit payment service users may be applied immediately

SOURCE: Devised by authors.

levied by that payment service provider on national payments of the same value and in the same currency.[32]

Lastly, alongside the sectoral regulations specific to banking and payment services referred to above, such services are also affected by the general consumer and user protection regulations,[33] an area in which a range of public authorities and bodies with different remits come into play, at central and regional government level. While an analysis of such regulations falls outside the scope of this article, it should be highlighted that, as companies, financial institutions are also subject to certain

32 See Article 3(1) of *Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001*.

33 The parties to which the general consumer and user protection regulations apply are different from those subject to the transparency regulations. Specifically, “consumer” or “user” refers to natural persons acting for a purpose unrelated to their commercial or business activity, trade or profession, and legal persons and entities without independent legal status acting on a not-for-profit basis in an area unrelated to a commercial or business activity (see Article 3 of *Royal Legislative Decree 1/2007 of 16 November 2007 approving the consolidated text of the General Consumer and User Protection Law and other supplementary laws*) (Spanish version only).

requirements as regards their business practices and offerings, as well as to the legal framework governing what are known as “clauses not negotiated individually” – specifically, in terms of accuracy, clarity, simplicity and good faith – and unfair contract terms, which are null and void as a matter of law.

Indeed, the Spanish Supreme Court[34] has repeatedly ruled that the consumer protection authorities have the power to sanction any unlawful administrative act consisting of the insertion of unfair terms in contracts executed with consumers, without any need for a prior civil court ruling.

Elsewhere, on 15 January 2021, within the Conferencia Sectorial de Consumo (Sectoral Consumer Affairs Body),[35] the Ministry of Consumer Affairs and the regional governments agreed by consensus on a single criterion whereby credit institutions may not unilaterally modify the terms of a contract with a view to charging fees and commissions where the commercial offer included the expressions “fee-free” or “zero commissions”. Thus, any unilateral amendment of contract terms must be provided for in the contract. Furthermore, before making any changes to a contract, the credit institution must give a “valid reason” (a vague legal concept that is interpreted restrictively in favour of consumers) and notify the consumer as soon as possible. In any event, the customer is entitled to cancel the contract immediately and without incurring any penalties whatsoever.[36]

3.2 Some examples of exceptions to the general legal regime

As noted above, under the legal regime there are some exceptions to the principle whereby fees and charges may be freely established. See Table 2 for a summary of notable examples.

3.3 Current account contracts, developments in maintenance and administration fees and other recent trends

A current account contract is an unregulated or atypical management contract, for what are known as “cash services”, which can be classified in Spanish law under the general framework governing commercial agency or mandate agreements.[37] These

34 See, by way of example, *Supreme Court Judicial Review Chamber Judgment 1582/2019 of 13 November 2019* (Spanish version only).

35 The Conferencia Sectorial de Consumo is the body tasked with cooperation and coordination on consumer affairs between the central government, the regional governments and the autonomous cities of Ceuta and Melilla.

36 See Ministry of Consumer Affairs (2021), *Report on the unilateral modification by financial institutions of the terms and conditions applicable to current and savings accounts, charging fees and commissions not previously charged on those advertised as “fee-free, zero commission accounts”*, January (Spanish version only).

37 See, by way of example, *Supreme Court Civil Division Judgment 7021/1997 of 21 November 1997* (Spanish version only).

Table 2
EXCEPTIONS TO THE GENERAL REGIME

	Characteristics
Payment accounts with basic features (a)	
Ordinary	Subjective scope: persons resident in Spain, asylum seekers and persons without a residence permit who cannot be forcibly removed
	Maximum monthly fee/charge: €3
	Services: opening of the account, deposit of funds, cash withdrawal in euro from bank offices or ATM machines in the EU, payment transactions with debit or prepaid cards and up to 120 payment transactions (i.e. direct debits, transfers and standing orders) per year in the EU
Free of charge	Subjective scope: persons in a situation of particular vulnerability or at risk of financial exclusion (b)
	Maximum fee/charge: free of charge
	Services: the same as the ordinary payment account with basic features
Payment account switching (c)	Fee/charge: free of charge for the costumer and the recipient payment service provider
Real estate loans with natural person borrowers (d)	Opening fee: may only be levied once and must encompass all of the costs of analysing, processing and extending the loan and other similar inherent expenses occasioned by the grant of the loan, as well as any foreign exchange fee for loans denominated in foreign currencies
	Early partial or total repayment fees are limited
Subrogation and modification of mortgage loans (e)	Early repayment fees and charges for extending the term of the loan are subject to specific limitations

SOURCE: Devised by authors.

a See Directive 2014/92/EU of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features; Royal Decree-Law 19/2017 of 24 November 2017 on payment accounts with basic features, payment account switching and the comparability of fees; Royal Decree 164/2019 of 22 March 2019 establishing a no-charge regime for payment accounts with basic features for individuals in a situation of vulnerability or at risk of financial exclusion, and Ministerial Order ECE/228/2019 of 28 February 2019 on payment accounts with basic features, payment account switching procedures and requirements for comparison websites.
b In other words, persons whose gross annual economic income per family unit does not exceed certain thresholds (two times the Multipurpose Public Indicator of Income for persons not pertaining to any family unit; two and a half times for persons pertaining to family units with less than four members; or three times in the case of family units with four or more members, large families or families including a person with a level of disability of 33% or more), without any of the family members owning or holding any in rem rights over properties (with the exception of their principal residence) or business entities.
c See Article 9(1) of Ministerial Order ECE/228/2019.
d See Law 5/2019 of 15 March 2019 regulating real estate credit agreements.
e See Law 2/1994 of 30 March 1994 on subrogation and modification of mortgage loans.

services have traditionally encompassed a range of services on the part of credit institutions, which execute the instructions of their customers, who in return pay certain fees and charges.

Specifically, such current account contract-related services have generally been remunerated in the form of maintenance and administration fees. Maintenance fees are charged for holding an account and for the basic cash service, as defined in each bank's in-house policies. Meanwhile, credit institutions generally charge an administration fee on account activity, in the form of a fixed amount for every entry recorded in each settlement period (usually monthly). Nonetheless, some credit institutions occasionally waive such fees on a certain number of entries, generally those concerning the most typical transactions included in the basic cash service.

Recent trends point to a rise in new bank fees and charges on traditionally fee-free services, as well as a new approach to existing fees and charges. Thus, services that were once understood to form part of a whole, such as the basic cash service, are now increasingly independent and have their own specific differentiating features. This also renders them increasingly independent for contractual purposes, as the link to the traditional underlying service is gradually broken.

Lastly, various proposals have been put forward in the public arena (including in the Spanish Parliament), which seek to modify the current legal regime applicable to bank fees and charges. Some of these proposals expressly include among their aims the need to prevent financial exclusion and enhance consumer protection, above all for the most vulnerable consumers. Analysis and assessment of these proposals fall outside the scope of this article.

Of particular interest are several motions tabled by various parliamentary groups, calling on the Government: i) to look into measures to guarantee access to ATM withdrawal services, particularly in rural areas;[38] ii) to incorporate provisions whereby certain banking services, such as access to cash, are deemed a "universal service"; iii) to eliminate the fees and charges applied to transactions where the customer is physically present in the bank;[39] and, with respect to the so-called "digital gap", iv) to broaden the range of services offered by post offices, ensuring that such services are accessible to elderly people who live in municipalities with less than 5,000 inhabitants and are at clear risk of financial exclusion; v) to prepare reforms to ensure that the elderly have easy access to face-to-face customer service from banks;[40] and vi) to guarantee access to payment accounts with basic features and the documentation evidencing the terms and conditions of access to such accounts.[41]

3.4 International comparison

The legal regimes governing the different types of bank accounts differ substantially in the European Union, particularly in connection with payment accounts with basic features, and as regards the treatment of fees and charges.[42]

Overall, there is a lack of harmonisation among the different Member States in terms of the level of fixed charges associated with payment accounts (i.e. the fees charged for holding the account itself and for having a debit card). This suggests that payment

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38 See "Parliamentary motion on the adoption of measures to regulate the price of ATM cash withdrawal services", *(2021) Official Parliament Gazette, series D, No 271,* May (Spanish version only).

39 See "Parliamentary motion on effective measures to guarantee face-to-face services from the financial sector and the public administration", (2022) *Official Parliament Gazette, series D, No 396*, February (Spanish version only).

40 See "Parliamentary motion to prevent the financial exclusion of the most vulnerable Spaniards", (2022) *Official Parliament Gazette, series D, No 396,* February (Spanish version only).

41 See "Parliamentary motion on measures to guarantee access to payment accounts with basic features for those eligible" and "Parliamentary motion on payment accounts with basic features", (2022) *Official Parliament Gazette, series D. No 423,* March (Spanish version only).

42 See European Commission (2020), *Study on EU payment accounts market: final report,* April.

accounts are a matter for each individual state. There are also significant differences within Member States between the lowest and highest fees and charges levied on the opening and maintenance of payment accounts.[43]

Payment accounts with basic features are available in all EU Member States. Nonetheless, while they are offered in some countries as part of a "standard" account, in others banks have opted to create a specific individual product in order to meet the requirements under European legislation.

Member States have also adopted different approaches in connection with the fee levels linked to accounts with basic features. This is essentially because the transposed EU legislation only requires that basic payment accounts be offered at no cost or in exchange for reasonable fees and charges, leaving each Member State discretion to determine what it understands by "reasonable" in light of its specific national circumstances.

Thus, while the levying of fees and charges is prohibited outright in some cases, elsewhere parameters have been set on how they should be calculated so as to be deemed reasonable for such purposes, with varying degrees of involvement (generally limited) on the part of the competent authorities of each Member State.

Meanwhile, the most important topical consumer issues identified in the period 2018-2019[44] in relation to the provision of banking services at European level notably included the fees and charges applied to payment accounts, payment services and loans. Most of these concerned transparency and pricing related issues, including the mismatch between the services rendered and the fees and charges levied.

Furthermore, one of the most common reasons for consumers' complaints received by the competent authorities between 2018 and 2019 were fees and charges, particularly in relation to mortgage and consumer loans, the provision of payment services (especially charges on ATM cash withdrawals using foreign cards) and payment accounts (in relation to administration fees or the introduction of new charges).

Specifically, several national and EU consumer associations reported a steady increase in the payment account and payment service-related fees and charges applied to consumers by credit institutions. Differences in the fees and charges applied have also been observed depending on the channel through which the services are provided (i.e. branches vs. alternative digital channels), being notorious the trend of lower banking costs for users of digital banking services.

43 See Figure 5 (p. 33) in European Commission (2020), *Study on EU payment accounts market: final report,* April.

44 For further information on these matters, see European Banking Authority (2021), *Consumer Trends Report 2020/21,* March.

Issues concerning banking service charges are among the regulatory and supervisory priorities of the different competent authorities of the EU Member States, most of which have a specific national regulatory framework in relation to fees and charges.

4 Possible future outlook and general conclusions

The increase in fee and commission income and the changes in the way such income is contractually provided for suggests that credit institutions may be leaning towards a framework in which costs are passed through more directly and on a service-by-service basis. This seems to be borne out by the emergence of new types of fees and charges, or new ways of applying such fees and charges to specific services that previously fell under broader categories, driven in some cases by technological considerations.

In this regard, as noted in previous sections of this article, Spanish credit institutions have traditionally used a general fees and charges model, in which prices were not broken down for each specific service. This commercial strategy may have conveyed the impression that the banking services enjoyed by customers were free.

However, this model may be undergoing a transformation, with credit institutions passing through the cost of banking services (particularly payment services) in a more direct and granular fashion. Thus, as an increasingly relevant source of income, individualised service fees and charges are likely to grow, and this trend could serve to highlight the value added by banking operations, while also facilitating new mechanisms to enhance customer loyalty.

The need to boost profitability appears to be one of the reasons behind this transformation. Moreover, in the case of payment services, the developments in the way the model itself operates represent one notable factor for potential change, with the rise of digital platforms, the advent of alternative means of payment based on such platforms and the emergence of new competitors able to offer services at a lower cost.

From a financial stability perspective, at least two implications emerge.

First, all of this could mean that fee and commission income will make a greater contribution to banks' profits and, by extension, their ability to withstand periods of stress. This, combined with the role of fees and charges as a possible counterweight to deteriorations in solvency, as well as the fact that they are less vulnerable to cyclical swings, could point to this revenue stream's increasing relevance as an additional factor to be borne in mind when assessing financial stability.

Second, this also appears to bring with it new risks, both for credit institutions and their customers, which may arise to varying degrees and may have an uneven impact across banks, and even on the stability of the system.

Thus, a trend towards individualised fees and charges could lead to a greater source of conflict for banks, where customers (or some of them) take the view that these fees and charges are unjustified or disproportionate or overlap with other services for which credit institutions already apply fees and charges. Managing such disputes (whether in court or otherwise) could generate costs, while also affecting credit institutions' reputations. While both aspects are hard to quantify, they could ultimately prove significant, particularly if the courts repeatedly find against credit institutions.

Any change in the fees and charges model could also make the services provided by new financial operators (with a decidedly digital approach) or the basic account service (originally designed to enhance financial inclusion) more attractive. Moreover, depending on how the model develops and is designed, it could have an adverse impact on some segments of the population, particularly those most vulnerable to the so-called "digital gap". In this regard, and despite the growing use of digital tools that facilitate remote banking services, the geographic dimension of the services offered may be a factor to be considered, given the potentially significant number of customers and types of service that require a face-to-face channel, as may the key role that location may play in the prices and types of some payment services.[45]

In short, the analysis of bank fees and charges has identified four key aspects, all of them relevant: i) customers, taking in factors such as transparency in services, consumer protection, the goal of preventing financial and technological exclusion, the need to safeguard access to a competitive market of financial products and services, etc.; ii) credit institutions, with regard to considerations such as the remuneration of services and costs, profitability, the need to adapt the business model in a low-interest rate digital environment, etc.; iii) financial stability, macroprudential policy and the structure of the financial sector; and iv) the regulatory framework, based on the freedom to conduct a business and the way this freedom is understood and balanced against other rights, and on the distribution of competences among the different public administrations.

45 See Ho and Ishii (2011).

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Table A.1
ANALYSIS OF STYLISED EMPIRICAL FACTS (a)

	Full model	Reduced model
Eur_12m	0,354**	0,178
	(0,124)	(0,113)
G_GDP_r	0,123***	0,318***
	(0,0345)	(0,0532)
Unem_rate	-0,0256	
	(0,0264)	
G_mar_s	0,00455*	
	(0,00225)	
G_ind_h	0,0988***	
	(0,0165)	
Y_curve_r	0,253**	0,254**
	(0,0827)	(0,0853)
G_cred	-0,0545***	
	(0,00944)	
Constant	4,347***	4,040***
	(0,559)	(0,426)
Bank fixed effects	Yes	Yes
Time fixed effects	No	No
R^2	0.47	0.32

Robust standard errors in parentheses

*** p<0,01, ** p<0,05, * p<0,1

	Full model	Reduced model
L.r_liq_ass	-2,631	
	(6,214)	
L.r_liab	0,890	
	(2,081)	
L.r_solv	-19,76***	-18,15***
	(5,441)	(5,152)
L.r_prof	2,075	
	(5,429)	
L.r_def	-9,556	
	(6,504)	
L.r_hous_cred	0,207	
	(1,523)	
L.r_cred	5,975***	5,967***
	(1,410)	(1,692)
L.r_emp	1,061***	1,282***
	(0,198)	(0,230)
L.r_cost	104,0**	109,0**
	(40,77)	(39,94)
	(1,019)	
L.r_cred_ps	-0,783**	-0,765*
	(0,306)	(0,378)
Constant	1,673	0,157
	(2,833)	(2,206)
Bank fixed effects	Yes	Yes
Tine fixed effects	Yes	Yes
R^2	0.28	0.24

Robust standard errors in parentheses

*** p<0,01, ** p<0,05, * p<0,1

SOURCE: Devised by authors.

a The dependent variable, fee and commission income-to-total assets, has been multiplied by one thousand to make it easier to interpret the coefficients. Macro variables: Eur_12m, twelve-month EURIBOR; G_GDP_r, real GDP growth; Unem_rate, unemployment rate; G_mar_s, Madrid stock market growth; G_ind_h, growth in the house price index; Y_curve_r, yield curve: spread between ten-year bonds and the twelve-month EURIBOR; G_cred, growth in credit. Bank variables: r_liq_ass, liquid assets-to-total assets; r_liab, deposits-to-total assets; r_solv, own funds-to-total assets; r_prof, ROA; r_def, default rate; r_hous_cred, household credit-to-total credit; r_cred, credit-to-total assets; r_emp, number of employees-to-total credit; r_cost, financial costs-to-financial liabilities; g_cred_ind, growth in credit; r_cred_ps, average rate of lending to the private sector. "L." indicates first lag of the variable.